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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re K.G. et al., Persons Coming Under the
Juvenile Court Law.

SOLANO COUNTY DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

LESLIE M. et al.,

Defendants and Appellants.

A147362; A146769

(Solano County
Super. Ct. No. J42458; J42459)

Parents of eight-year-old K.G. and seven-year-old C.G., appeal from the juvenile court's orders, pursuant to Welfare and Institutions Code section 366.26,¹ terminating their parental rights and ordering adoption as the permanent plan. Father contends the court improperly found that he had failed to establish the applicability of the beneficial parent-child relationship exception to adoption. In addition, pursuant to California Rules of Court, rule 8.200(a)(5),² Mother states that, "to the extent that the issues of [Father] benefit [Mother], she joins in, and adopts as her own, the arguments raised in [Father's] opening brief." We shall affirm the juvenile court's orders.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² All further rule references are to the California Rules of Court, unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND³

On April 10, 2014, the Solano County Health and Social Services Department - Child Welfare Services (Department) filed an original petition alleging that K.G. and C.G. came within the provisions of section 300, subdivisions (b) and (g). Specifically, the petition alleged that, two days earlier, Father was arrested for possession of a controlled substance and child endangerment. During a search of Father's home, methamphetamine, a methamphetamine pipe, and other drug paraphernalia were found within reach of the children. Father also had a history of substance abuse, including methamphetamine and marijuana use, that had not been adequately addressed. Upon his arrest, Father was not able to make appropriate provision for the children's care. The petition also alleged that Mother had a history of substance abuse and untreated mental health issues, which interfered with her ability to provide safe and adequate care for the children.

In the detention report dated April 10, 2014, the social worker reported that Father remained incarcerated. Several family members had been interviewed, including Mother, who said she had not spent time with the children for a few months and that she could not have them with her at that time because she was going through a " 'tough time.' " The maternal aunt (aunt), who had cared for the children for about a month the previous January, said that both parents had a drug history and Mother also suffered from depression. The maternal grandmother stated that she had recently witnessed Father shooting at a car right outside the family's apartment when she was there to pick up one of the boys. Both the aunt and the maternal grandmother were concerned about the parents' ability to care for the children and were in the process of requesting legal guardianship.

³ Most of the facts regarding events occurring before the section 366.26 hearing are taken from our prior nonpublished opinion in this matter, in which we denied Father's petition for extraordinary writ, filed pursuant to rule 8.452. (*Michael G. v. Superior Court* (Aug. 27, 2015, A145280).)

The family had a prior child welfare history since 2008, which included substantiated allegations of general neglect and emotional abuse in March 2013, based on ongoing domestic violence between the parents, a dirty home, mother screaming at the children, and medical neglect of the children. Although the family was referred for voluntary family services, the case was closed after the parents refused services.

On April 11, 2014, the juvenile court ordered the children detained.

In the jurisdiction/disposition report filed on April 28, 2014, the social worker reported that the children had been placed with the aunt, and the maternal grandmother was caring for them while the aunt was at work. K.G. was in the first grade and, in an interview with the social worker, was unable to identify what drugs and alcohol are, but said that Father smokes cigarettes a lot. He said that his parents “fought all the time” when they were together and that both parents spanked him on his bare bottom with a belt, which left bruises. K.G. said that he felt safe living with Father but only sometimes felt safe when living with Mother. The social worker also interviewed C.G., who said that, when he lived with both parents, he saw them fighting. When C.G. got in trouble, Father, Mother, or the paternal grandmother would spank him with a spoon or a belt. C.G. had seen Father smoke cigarettes or “cigars,” which are made of glass. After smoking cigars, Father “ ‘acts strange,’ ” eating different foods and “ ‘talk[ing] grumpy.’ ” The maternal grandmother told the social worker that the children had been “passed around to various different relatives for awhile.” She said that when K.G. “was two weeks old, he was given to his aunt, . . . and she had him until he was two years old.” The maternal grandmother also said that, when K.G. was living with Father, he missed about two days a week of school. She had noticed many people staying at Father’s apartment; at one point, there were at least five adults living there, with the children sharing the bottom bunk of a bed and another man sleeping on the top bunk.

Father had two pending criminal matters involving, inter alia, possession and transportation of methamphetamine for sale, being a felon in possession of a firearm, possession of burglary tools, and obstructing or delaying a police officer.

The Department recommended that K.G. and C.G. be adjudged dependent children and that the parents be offered reunification services. The proposed case plan for Father included the following objectives: to express anger appropriately and not act negatively on his impulses; to not behave in a manner that is verbally, emotionally, physically, or sexually abusive or threatening; to consistently, appropriately, and adequately parent the children; to stay free from illegal drugs and show his ability to live free from drug dependency and to comply with all required drug tests. Father's case plan responsibilities would include participation in "counseling to address issues with anger management, domestic violence, parent/child relationship issues and resource management"; completion of a parenting skills program; participation in a substance abuse assessment and following up with recommendations of the assessment; and participation in random drug testing as requested by the Department. The services objectives in Mother's case plan included the following: to comply with medical or psychological treatment, to appropriately parent the children, to stay free from illegal drugs, and to comply with all required drug tests. Her case plan responsibilities would include participation in a mental health assessment and counseling, completion of a parenting skills class, participation in a substance abuse assessment and following up with recommendations, and participation in random drug testing. The Department also recommended that the parents receive one hour of supervised visitation per week.

At the May 13, 2014 jurisdiction/disposition hearing, the juvenile court dismissed the allegation under subdivision (g) of section 300 and sustained the amended petition, ordered out of home placement for the children, and reunification services for both parents.

In a status review report that was filed on October 14, 2014, the social worker reported that Father was incarcerated from June 13 to August 22. The social worker met with Father at the jail on June 24, at which time he denied physical domestic violence, but admitted to emotional and verbal abuse with Mother. While he was in jail, the social worker referred Father to one-on-one parenting education. Upon his release from jail,

Father had said he was not on probation, but a probation officer subsequently informed the social worker that Father was required to check in with him and to drug test.

On August 27, 2014, Father met with the social worker to discuss his case plan and the social worker referred him to Solano County Mental Health Access for counseling services. In September, Father began participating in individual counseling and parenting education through the Healthy Partnerships outpatient substance abuse treatment program. Father had tested positive for marijuana on August 29 and September 17. Father told the social worker that he used marijuana “to treat moments of intense anxiety.” While in jail, the social worker had coordinated substance abuse services during his incarceration, and Father had participated in anger management and relapse prevention through the Anka program. After his release from jail, he was referred to the Behavioral Health Assessment Team (BHAT)⁴ for a substance abuse assessment, and subsequently began participating in mood management, individual sessions with a counselor to address his substance abuse, and random drug testing. Father had also begun supervised visits with the children.

Despite numerous attempts by the social worker, Mother was unwilling to communicate or cooperate in any way with the Department.

Both children had adjusted well to the home of their aunt. They were receiving counseling services and their aggressive behavior toward each other had lessened. K.G.’s ability to focus in school had improved; he had advanced five reading levels. C.G. had expressed that he wanted to hurt himself because he felt sad about not seeing his parents. The children appeared to be struggling with the separation from their parents, especially Father.

The Department recommended that the juvenile court order additional reunification services for Father, but recommended that Mother’s reunification services be terminated.

⁴ The social worker later confirmed that BHAT is a clearing house for substance abuse services, which assesses individuals and refers them to programs.

At the six-month status review hearing, which took place on November 4, 2014, the juvenile court extended reunification services for Father, but terminated Mother's reunification services due to her failure to make any progress with her case plan.

In a status review report filed on April 15, 2015, the social worker related that she had been meeting with Father at least once a month in addition to telephone calls to check on his progress and make inquiries as to his needs. Father had been living with his brother's family, but had told the social worker that the instability of the home contributed to his substance abuse. The Department also had intervened in the home due to his two nephews' exposure to drugs and alcohol. The Department had provided Father with information about alternative housing, but he had remained in the home.

Father's substance abuse counselor at Healthy Partnerships told the social worker in October 2014 that Father had not shown up to several individual and group counseling sessions. He further stated that Father was "currently in denial about his drug addiction, [was] going through the motions, and refuse[d] to participate in Narcotics Anonymous (NA)."

Regarding compliance with the general counseling/therapy component of his case plan, the social worker related that Father had informed her on December 9, 2014, that he had stopped participating in therapy because of his work schedule, but that he continued to participate in individual counseling through Healthy Partnerships. When the social worker explained that the Healthy Partnerships counseling was part of his substance abuse treatment and that he was also required to attend counseling to address his domestic violence, anger, and other issues, Father became angry. When the social worker attempted to explain that such counseling was part of his court-ordered case plan, Father "repeated several times it was not his problem and became confrontational" The social worker attempted to discuss the counseling requirement with Father a week later, but he again became angry and stated that he had previously initiated therapy on his own, and not because it was part of his case plan. Father had participated in a total of six therapy sessions in September and October before stopping.

In January 2015, the social worker spoke with the substance abuse counselor at Healthy Partnerships about the possibility of his providing Father with therapy, but learned that, because he was not a paid therapist, he was not approved to provide Father with general counseling. Father later told the social worker that he would begin therapy again with his former therapist. At a February meeting with Father, the social worker gave him the former counselor's contact information after he said he had not yet contacted her.

In March 2015, Father said he still had not contacted his prior therapist and expressed the feeling "that he was being set up for failure and [that] feeling overwhelmed was a trigger to his substance abuse." The social worker then agreed that he could work on his substance abuse treatment and parenting issues before returning to therapy, but made clear that he would have to complete the general counseling component of his case plan. The social worker then contacted Healthy Partnerships to try to arrange for a therapist to be assigned to provide general counseling for Father, along with other services.

In addition, Father had begun participating in a parenting education group at Healthy Partnerships in September 2014, but, in November, he had been asked to stop attending group meetings until his marijuana levels decreased. On January 14, 2015, the social worker had learned that Father was being discharged from Healthy Partnerships; one of the concerns was his minimal participation in groups. On February 18, Father was referred to the Suisun Family Resource Center (FRC) for parenting education. Although he participated in an intake appointment and one session, he failed to attend a subsequent session.

Between September 2014 and April 2015, Father had tested positive for marijuana three times, had tested positive for both marijuana and methamphetamine twice, and had not shown up for testing—considered a positive test—12 times. He had tested negative only twice, in December 2014 and January 2015. However, the drug tests showed that his marijuana levels had decreased over time. When the social worker raised Father's substance abuse issues, Father said he would start participating in NA meetings. He also

said he was reluctant to take medication for his anxiety. During a February meeting with the social worker, Father said he did not believe that substance abuse treatment would help him maintain his sobriety. Rather, he thought that only he could do that and that keeping away from people who used drugs was a solution. Father's probation had been extended and he had been ordered to serve a 30-day sentence in jail because the discharge from his substance abuse program and testing positive for methamphetamine were probation violations.

Father had been participating consistently in supervised visitation with the children. The boys had expressed to the social worker how much they missed Father and the desire to spend more time with him during supervised visits. However, when the Department changed visitation from supervised visits at the Department to visits in the community supervised by the aunt, in October 2014, K.G. had begun displaying negative behaviors in the home and at school after visits. K.G. later told the aunt, "I don't know if I want dad to visit at home anymore. I don't know if I like that." There were also concerns about Father's failure to arrive on time for the visits, bringing unapproved guests to visits, and behaving suspiciously in the home. When the social worker confronted Father about this, he offered excuses and also said he had recorded conversations during his visits to " 'cover his behind.' " Because of the concerns about visits at the home, the social worker submitted a referral for Father to begin visiting the children through Aldea Therapeutic Visitation Services (TVS).

Once the visits became supervised through TVS and/or the Department, starting in December 2014, no more concerns were noted. By January 2015, K.G.'s behavior at home had improved. He began to express doubt about Father's ability to do what was necessary to reunify with him and C.G., and expressed concern about the arrival of Father's new baby. C.G. continued to adjust to the placement with his aunt. He had made no threats of self-harm and had started to open up in therapy.

During the current reporting period, the social worker had "grown increasingly concerned about [Father's] willingness to collaborate with the Department and use the programs and services in place in order to address his substance abuse and personal

issues through counseling. . . . It is the [social worker's] hope that the father is ready to benefit from this second reentry into the outpatient substance abuse program, however, the Department cannot overlook [Father's] minimal progress in resolving the problems that led to the minors' removal and his inability to demonstrate his capacity and ability to complete the objectives of his treatment plan in order to provide for the minors' safety, protection, physical and emotional well-being." The Department therefore recommended that the juvenile court terminate Father's reunification services and set the matter for a section 366.26 hearing.⁵

At the contested 12-month review hearing, which took place on May 26, 2015, social worker Veronica Ceja was qualified as an expert in the area of child welfare. Ceja testified that she had met with Father at least monthly since she was assigned to the case in June 2014. Father had completed a parenting program in April and had been participating in therapeutic visitation with the two children. Ceja understood that the visits were going well and that he engaged with the children appropriately.

Father had reenrolled in Healthy Partnerships' outpatient program in March 2015. Since then, he had missed two meetings in March and April, missed two drug tests in March, tested positive for (unspecified) drugs on May 1, and tested "dilute" on May 8 and May 18. Father also had failed to test on May 11, but had voluntarily tested on May 13; that test was negative. Father was at the same level of non-compliance with Healthy Partnerships as when he was previously discharged. He was in danger of being terminated again due to non-compliance. In addition, Ceja had met with Father the previous week, and he had told her that he did not believe he was receiving adequate support at Healthy Partnerships. He said he had looked into the Anka outpatient program, and Ceja had sent a referral to BHAT, requesting an assessment of Father in

⁵ In reports filed on April 15, 2015, the children's court appointed special advocate (CASA) reported that both children were doing well in the aunt's care. K.G. was very angry because he did not understand why he could not go home and live with Father. K.G. also wanted to spend more time with his uncle at his current placement. The CASA believed K.G. needed strong and positive male influences.

light of his request to change outpatient programs. Moreover, when Father did not contact his former therapist and said he was overwhelmed, Ceja had contacted Healthy Partnerships about assigning him a therapist there, so he could “do everything in-house.” A therapist was not currently available there, however.

Ceja did not believe the children could be safely returned to Father at present. Nor did she believe there was a substantial probability that they would be returned to Father if he were provided an extension of reunification services to the 18-month date. She based her opinion in part on his minimal participation in his outpatient drug treatment program and his failure to participate in counseling to address domestic violence or anger management, other than for two months during the first six months of reunification services. She was particularly concerned about Father’s need to address anger management, given his expressions of anger when she raised the need to participate in therapy in January through March 2015. Based on a conversation she had with Father the previous week, Ceja did believe that Father had recently come to terms with the fact that he had a substance abuse problem, which he said he wanted to address.

Father also testified at the hearing. He had been working part-time since September or October 2014. He had successfully completed a seven-week parenting class. He was placed in custody on April 17, 2015, due to his discharge from the Healthy Partnerships program, which was a probation violation. Since his release from custody on May 1, he had reenrolled in Healthy Partnerships and had completed all of his drug tests. Although he wanted to be referred to a different substance abuse program—Anka—he would complete whatever program that was recommended. The social worker had brought up the possibility of residential treatment, but Father did not think being around so many addicts would be good for him.

Father had been visiting with the children weekly. They had begun therapeutic visitation in February 2015, and Father had learned how to talk to his children and how to be more understanding of their feelings and what they have to say. Father believed his home, which was owned by his grandparents, would be safe for the children now that his brother and sister-in-law had moved out, and no drugs were present.

On cross-examination, Father acknowledged that he had recently missed a drug test, on May 11, 2015. Although he was planning to attend three NA meetings the week of the hearing, he had last attended an Alcoholics Anonymous (AA) meeting in 2011 and had last attended an NA meeting when he was 13 years old. With respect to the general counseling requirement, Father was waiting for Healthy Partnerships to set up counseling for him. He had previously participated in therapy for a few months, but had stopped “because I was overwhelming myself with all the things I had to do, which was causing me to relapse at the time.” He hoped to enroll in the Anka program, where all of the services would be in one location.

At the conclusion of the hearing, the juvenile court ruled as follows: “[T]he findings I would make, first of all, I would find that [Father’s] only had sporadic achievement in meeting the court-ordered goals, especially as it relates to the substance abuse issues and the testing for the presence of substance abuse, which, of course, is the basis of the petition that was sustained. The vast majority of his tests are either actually positive or presumptively positive, the vast majority, which does not address the reason that he’s before the court today.

“Now, compounding the problems with respect to his substance abuse is his insistence that he deal with his substance abuse issues on his own terms. He wants to dictate to the social worker, and indirectly to the court, how he’s going to deal with his substance abuse problem. And when you look at his history of testing, the positives, either actual or presumptive, it’s clear that his approach doesn’t work. He wants to control the environment in which he receives the substance abuse counseling, despite efforts to get him to participate in other ways.

“Now, his substance abuse history, coupled with his rationalization with why he can’t participate in the kinds of abuse [*sic*] counseling that are being offered to him, leads me to conclude that there is a continuing detriment to the children, based upon the reason he’s before the court and his sporadic, at best, response to resolving that issue over 12 months.

“And nothing that he’s offered [here] in court, as he dances around the issue of why he hasn’t really participated in substance abuse [*sic*] counseling, tells me that anything in the future is going to change in that regard. If it’s not the kind of counseling that he thinks will be productive, he’s not going to participate in it.

“So I would find, by a preponderance of the evidence, that the return of the children to the physical custody of the father would create a substantial risk of detriment to the children’s safety, protection, or emotional well-being. [¶] I further would find that the county has offered reasonable services to the father to facilitate the return of the children to the father. I would also find that there is not a substantial probability that the children would be returned within six months.”

The court therefore terminated reunification services for Father and set the matter for a September 15, 2015 section 366.26 hearing.⁶

On June 2, 2015, Father filed a notice of intent to file writ petition and, on August 27, 2015, we denied Father’s petition for extraordinary writ, filed pursuant to rule 8.452, in which he sought review of the juvenile court’s findings and orders terminating his reunification services and setting the section 366.26 hearing.

In a report filed on September 3, 2015, the CASA reported that K.G.’s “behavior has improved and over the past couple of months he has been much happier, talkative and full of fun and laughter. It has been almost as if a huge burden has been lifted from him.” He seemed “much happier, with school, home and his situation.” The CASA described C.G. as a very sweet and loving boy, whose confidence seemed to have grown over the previous few months. Both boys had recently visited with Mother for the first time in almost two years. Visits with Father were now once a month, and the children seemed to be adjusting well. Both children enjoyed the visits and talked about the expensive toys Father would give them; Father had also mentioned getting them a cell phone. The

⁶ The court also reduced Father’s visitation to twice monthly supervised visits, pending the section 366.26 hearing.

CASA was concerned that Father seemed “to be trying to buy or bribe his kids at this point with expensive toys and promises of cell phones and fun.”

K.G. was well aware that he might not be able to live with his father. He had expressed that he was very happy living with his aunt and uncle. He had begun therapy with a male therapist, and his relationship with his uncle had grown over the past months. The CASA observed that K.G. “loves his Father very much and seems almost angry or indifferent towards his mother. He has adjusted well in his current environment and seems willing and wanting to continue living with his aunt and uncle if things don’t work out otherwise.” C.G. had acknowledged that the chances of living with Father again were “possible, but very small.” He seemed to be adjusting to that idea and had expressed that “it would be ‘good’ ” if he remained living with his aunt and uncle.

In the September 14, 2015 report prepared for the section 366.26 hearing, the Department recommended that both parents’ parental rights be terminated and that adoption be the permanent plan for K.G. and C.G. The social worker reported that Father had said he did not support the adoption recommendation and planned to file a petition pursuant to section 388. Mother was also opposed to adoption, and hoped Father would be able to reunify with the children.

Father was still working at a local pizza restaurant and living in his grandparents’ home. He was drug testing, but the results were “coming out diluted.” His probation officer, however, said that all of his recent tests had been clean and she had no sense that he was currently using. Father was also attending AA meetings and taking medication for anxiety. He said he was participating in classes at Healthy Partnerships and had completed an anger management class. He was now participating in supervised visitation twice per month with the children, who appeared to enjoy the visits. Father would bring snacks to the visits and help them to build with Legos. The children had no problem transitioning back to the aunt and uncle after visits. The boys had had their first visit with their half sister (presumably Father’s new baby) in August, and no concerns were noted from that visit.

The social worker had met with Mother, who was living with her father and not participating in any services. She had participated in one recent visit with K.G. and C.G.

The social worker believed that Father had made some positive changes, including having stable employment and participating in mental health and substance abuse services. He had not, however, changed his living situation and there was no evidence that he had addressed his domestic violence problems.

The social worker had spoken with K.G.'s former therapist, who worked with him for about two years. K.G. had made significant progress over that time. The therapist indicated that much of that success was due to the stable life his aunt and uncle had provided for him. During sessions, he would constantly talk about wanting to reunite with Father and the therapist believed he was very attached to Father. The therapist also said K.G. had a good attachment to the aunt, who "provides a very loving, safe, and stable environment that he is able to thrive in. His behavior has improved significantly while in her care." Finally, the therapist "strongly believed" that if parental rights were terminated, postadoption visitation with Father would be appropriate given their close relationship.

The social worker also spoke with C.G.'s therapist, who said that, when she had begun working with him a year earlier, he had many tantrums and was threatening to harm himself. She had seen a big change in that he had developed more coping skills. She also believed that the aunt had helped with C.G.'s growth because he "feels safe with her and feels safe talking to her about anything." Initially, he had sometimes talked about going home with Father, but recently had not brought up Father or Mother. The therapist had no concerns about C.G. because he had support and she believed he was "in a good space."

The social worker reported that the aunt was committed to adopting the children. The uncle, however, was uncertain about whether he wished to go forward with adoption. "His hesitancy is in no way related to the boys remaining in his home or with financial and emotional support. He needs more opportunity to consider a number of issues that include legal responsibility, his past relationship with the birth father, and due to his

working long hours, he [had] not had the opportunity to establish a closer attachment with his nephews. In recent months, he has spent more time with the boys and their relationship is growing.” Regardless of his ultimate decision, the uncle had “stated adamantly that he fully supports his wife moving forward with adoption. . . .”

The social worker believed that over time, as their relationship and attachment to their aunt and uncle had grown, “the boys now see the relatives as their parents and their father as a friendly visitor. They have been able to better understand that their father is unable to take care of them and look forward to staying with their relatives.” The social worker did not believe it would be detrimental to the children to terminate parental rights because the benefits of adoption would outweigh the benefit of maintaining the legal relationship with their parents. The aunt had known the boys since they were born and had been taking care of them in her home for nearly one and one-half years. The social worker noted that service providers had all commented that they had seen dramatic improvements in the boys’ behavior in the previous year and they gave “the credit to the prospective adoptive mother for being able to meet the boys’ emotional and physical needs.” The aunt understood the close connection the children had with Father and she “would like to continue ongoing contact with both parents as long as it is safe and in a public setting. [She] does not wish to complete an adoption contact agreement.”

The social worker had talked to both children, who said that they liked living with their aunt, “but do have a desire to live with their father again. They have come to understand that returning back to their father will not be possible. They expressed that they will be sad, but understand that their Aunt will take care of them and they will grow up in her home. They also understand that they will be able to maintain contact with their father and mother.” The social worker noted that the children had a good relationship with Father, and therefore believed “that it would be appropriate to maintain contact with the parents after the adoption is completed.”

On September 25, 2015, Father filed a petition pursuant to section 388, in which he requested additional reunification services. He stated that his circumstances had changed because he had completed an outpatient treatment program, had participated in

counseling, and had maintained his sobriety. He visited with the children, who were bonded to him, and he continued to work and had appropriate housing for his family.

In a report filed on October 22, 2015, in response to Father's petition, the Department recommended denial of the petition. The social worker reported that Father had completed his substance abuse program and a parenting class. His last positive test, for marijuana, was on June 30, 2015. However, he had not completed any anger management classes or a domestic violence program, which he continued to believe he did not need. There were also concerns that his living situation put him in danger of relapse. The social worker did not believe it would be in the children's best interest to prolong their uncertainty regarding the future by providing Father with six more months of services.

The social worker had observed a visit between Father and the children on October 19, 2015. Father brought new toys, costume accessories, a portable DVD player, and candy. The boys were happy to see Father and pleased with the items he had brought them. They watched a movie together and Father engaged with the boys by asking them questions about school. The boys called Father "daddy," and appeared to enjoy their time with him. At the end of the visit, K.G. was a bit upset that the visit had to end, but Father "did a great job comforting him and letting him know that he will see him soon." He hugged and kissed the boys and told them that he loves them. The boys transitioned back to the aunt without any difficulty.

The social worker also provided an update regarding the uncle, who, within the past two months had "changed his position and would like to move forward with adopting" the boys. Initially, "there were some unanswered questions that the uncle had, these questions were answered for him" and he now had a better understanding of the process of adoption.

The hearing on Father's section 388 petition took place on October 26, 2015. Father and Maurice Shaw, the social worker assigned to the case, testified. Shaw testified consistently with the Department's October 22, 2015 report about Father's progress with his case plan and visits with the children.

Father testified that he was working fulltime and was still living at his grandparents' house, but was seeking housing of his own and had about \$500 saved for rent. He had successfully completed the Healthy Partnerships program, had last used methamphetamine in April 2015, and was now testing negative for drugs, including marijuana. He had also completed a parenting class. He had not, however, participated in a domestic violence or anger management class. Father further testified that he had attended every visit with K.G. and C.G. the Department had scheduled for him, which were now twice monthly. The boys called him "dad" or "daddy." If reunification services were reopened for him, Father "would do anything to try to get my boys back"⁷

At the conclusion of the hearing, the juvenile court denied the petition. The court first stated that Father should be commended for completing the Healthy Partnerships program; testing negative for drugs since May or June 2015, having a full-time job; and participating in regular, positive visits with the children. The court found, however, that after more than 18 months, this was not enough, given that Father had only recently completed a single major component of his case plan. Also, with respect to housing, he had no real plan or timetable to obtain appropriate living accommodations for himself and the children. The court therefore found that there had not been a sufficient change of circumstances to warrant reinstatement of Father's reunification services.

On November 3, 2015, Father filed a notice of appeal from the denial of his section 388 petition.

The section 366.26 hearing took place on December 11, 2015 and January 5, 2016.

Maurice Shaw, the social worker assigned to this case since July 2015, testified as an expert in child welfare and social work. During the three visits he had observed, the children looked to Father to meet their basic needs in that they would request his help

⁷ Father acknowledged that he was presently receiving reunification services in his baby daughter's case, who was removed from his custody in May 2015, on the day she was born.

with opening things or would ask how to turn something on. Shaw had assessed the children as being adoptable because they were young, able to attach to adult figures, and had no developmental delays or emotional concerns. Their aunt and uncle were committed to adopting them, and Shaw had no doubt about the Department's ability to find an alternative adoptive family if for some reason the aunt and uncle could not adopt them.

Shaw had observed the children with their aunt and uncle. Their interactions were very positive and they listened to their aunt when she redirected them. C.G. in particular had a real closeness with the aunt, and would sit on her lap at times during Shaw's compliance visits. The aunt was also active in the children's school; she met with and received updates from their teachers.

According to Shaw, the children needed to be in a home "where they know where they are going to be growing up. . . . [T]hey have a solid routine of going to school and . . . after school activities, and do family activities together." Father had not parented the children in over 18 months, except during visits, and neither had Mother. Shaw believed that the benefit of being in a stable home with the aunt and uncle outweighed any detriment from termination of parental rights.

Shaw further testified that, at the start of the dependency, the children had exhibited behaviors consistent with trauma. For example, they were quite violent with each other. Shaw had not received any negative reports about their behavior since he had been the social worker on the case. The boys now had a positive relationship with each other. They were also happy and content in their placement. They had, however, been consistent in wanting to be back with their parents throughout the entire case, which was not unusual for children of their age. Each of the three times Shaw asked about their wishes, in August, September, and December 2015, the children had said they wanted to live with Father. The last time, when Shaw asked them why, K.G. said it was because Father had a better Wii Progressive video game system than his aunt. He also said at the same time, " 'I really want to stay here with my aunt and uncle.' " C.G. said he wanted to live with Father because he had the better Wii, but also said he missed Father.

In addition to Father's twice monthly visitation, he called the children regularly. Although the children were sometimes a bit upset when leaving a visit with Father, once they reconnected with their aunt in the car after the visit, they were okay. Shaw believed that the aunt and uncle were now the "parental figures" in the children's lives and that they saw Father more as a "friendly visitor." Shaw understood that there would be some detriment to the children, in the form of grief and loss, in terminating parental rights. He had weighed the level of that detriment against the benefit of being adopted in determining that adoption would be the best permanent plan for them.

Shaw testified that he had provided information to the aunt and uncle about both adoption and legal guardianship, but they had never considered legal guardianship instead of adoption. Even if parental rights were terminated, the aunt had made clear that she wanted the boys to have a relationship with their parents, as long as it was healthy and safe for them. The aunt had also said this to the boys. Shaw acknowledged that the Department could not guarantee that the boys would continue to have contact with the parents.

At the conclusion of Shaw's testimony, the juvenile court indicated that, "arguably, there are portions of [Shaw's] testimony that might support [the beneficial parent-child relationship] exception. But it makes it pretty difficult for the court when I—if I don't even hear from these parents who are asserting that exception for me to [¶] . . . I will be frank, I would need to hear from them." The court indicated it might also be helpful to hear from the CASA or the children's therapists in determining whether the parent-child relationship exception applied. The court expressed its willingness to find another date for a continued section 366.26 hearing if the parties wished to present more evidence. The court continued the matter so that the parties could decide whether to call additional witnesses.

At the January 5, 2016 continued hearing, all counsel indicated that they were not going to call any other witnesses. In addition to counsel for the Department, the children's attorney and the CASA argued for the termination of parental rights and adoption as the permanent plan for the children.

In its ruling, the court found that there was no dispute that K.G. and C.G. were adoptable. The court then addressed the beneficial parent-child relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i). As to the first prong of the exception, the court found that Mother had not shown that she had maintained regular visitation and contact with the children. It did find, however, that Father had satisfied his burden of showing that he had maintained regular visitation and contact with the boys.

With respect to the second prong, the benefit to the children in maintaining the parent-child relationship versus the benefit to them of being in a stable adoptive home (see § 366.26, subd. (c)(1)(B)(i)), the court first observed that the children clearly loved Father and he clearly loved them. The court continued: “But I want to make sure that we understand that that’s not what’s being tested here today. The focus has to be on these children and what’s best for them. Now, clearly there’s going to be detriment if I terminate parental rights. Without a doubt, these children will lose something. They will. And they will be losing the benefit of this parental relationship. . . . I have to weigh that against the benefits of them being adopted. . . . In some respects [Father] has fulfilled a parental role with these children. In other respects, he has not. But again I have to weigh this, okay, on a scale.

The court then noted that the social worker and the children’s counsel, both of whom had a great deal of experience in dependency cases, as well as the CASA, who had spent more than 140 hours with the children over the course of the dependency, had opined that the benefits of adoption outweighed the benefits of maintaining the parental relationship, all “in the face of the children expressing their preference to maintain the parental relationship with their father.” The court also stated that it was taking into account the preference of the children, who were now six and eight years old. “But in doing that, how much weight I’m going to give to that statement of preference, it has to be tied to the stated reasons that they’re expressing. . . . Is it intelligent, considered, mature? . . .

“Without a doubt, they’ve expressed over and over and over again that their first preference is to go back to their dad. And that has to have a great amount of meaning to

him. And it should. [¶] And it should have a great amount of meaning to the children's caretakers, as well. They're old enough to know who their parents are, and old enough to where, well this isn't something that they're going to forget. And they're old enough to . . . express that it has some importance to them.

"I'm giving this some weight, but it's not enough for me to override what I see and what I hear in the way of the evidence in this case about what has happened [to] them since they've been in the placement with the caretakers. These children have improved dramatically. And it's pretty clear to me that they're thriving as a result of being in a stable and loving home that meets their needs. And as a result, I can't find that the benefit of maintaining the parent/child relationship would outweigh the benefits of adoption in this case.

"As far as the question of guardianship versus adoption, the law is clear, the law states the preference is for adoption. And these children deserve the stability that that can provide to them. [¶] But I would caution the adoptive parents that not facilitating contact, although there is no requirement that they do so, but not doing that would probably be a big mistake for these kids. They're not going to forget who their parents are. . . ."

The court therefore found that the children were likely to be adopted, terminated the parental rights of both parents, and stated that adoption was the permanent plan.

On January 13, 2016, Mother filed a notice of appeal from the January 5 order terminating her parental rights. On February 2, father filed a notice of appeal from that same order. On May 6, 2016, we granted Father's motion to consolidate Mother and Father's appeals.

DISCUSSION

Applicability of the Beneficial Parent-Child Relationship Exception to Adoption

The parents do not dispute that the children are adoptable. Father contends, however, that the court abused its discretion in finding inapplicable the beneficial parent-child relationship exception to adoption.⁸ Mother joins in Father's argument.

"Once reunification services are ordered terminated, the focus shifts to the needs of dependent children for permanency and stability. [Citation.]" (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) "At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred plan. [Citation.]" (*In re K.P.* (2012) 203 Cal.App.4th 614, 620 (*K.P.*)). When the court finds that the child is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds by clear and convincing evidence, pursuant to one of the statutorily-specified exceptions, "compelling reason[s] for determining that termination would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) The parent has the burden of proving that termination of parental rights would be detrimental to the child under any of these exceptions. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553 (*C.F.*)).

At issue here is the beneficial parent-child relationship exception, which applies if the juvenile court finds, by clear and convincing evidence, "that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

Appellate courts have differed on the correct standard of review for determining the applicability of a statutory exception to termination of parental rights. (Compare, e.g. *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*re Autumn H.*) [applying substantial evidence standard]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*))

⁸ Although Father filed a notice of appeal from the denial of his section 388 petition, he does not now challenge that denial.

[applying abuse of discretion standard]; *K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622 [applying substantial evidence standard of review to whether beneficial parent-child relationship exists and applying abuse of discretion to standard to whether that relationship provides a compelling reason to apply exception].)

Although the “practical differences” among these various standards of review “are not significant” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351), “the Sixth Appellate District has cogently expressed the view that the review of an adoption exception incorporates both the substantial evidence and the abuse of discretion standards of review. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315. (*Bailey J.*)). The *Bailey J.* court observed that the juvenile court’s decision whether an adoption exception applies involves two component determinations. ‘Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court’s determination.’ (*Id.* at p. 1314.) The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes ‘a “*compelling reason* for determining that termination would be detrimental” ’ to the child. (*Id.* at p. 1315.) This “ ‘ “quintessentially” discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption[,]” is appropriately reviewed under the deferential abuse of discretion standard.’ ” (*In re J.C.* (2014) 226 Cal.App.4th 503, 530-531 (*J.C.*)).

Like the courts in *J.C.* and numerous others cases, we believe that use of this hybrid standard of review is appropriate when reviewing juvenile court determinations regarding the statutory exceptions to adoption. (*J.C.*, *supra*, 226 Cal.App.4th at p. 531.)

In the present case, it is undisputed that Father satisfied the first prong of section 366.26, subdivision (c)(1)(B)(i), in that he maintained consistent and positive visitation with the children. However, Father and the Department disagree as to whether the court

properly concluded that the benefit of adoption outweighed the benefit of a continued relationship with Father. (See *ibid.*)

In *In re C.F.* (2011) 193 Cal.App.4th, 549, 555 (*C.F.*), the appellate court “interpreted the phrase ‘benefit from continuing the relationship’ in section 366.26, subdivision (c)(1)(B)(i) to refer to a ‘parent-child’ relationship that ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ [Citation.]

“A parent must show more than frequent and loving contact or pleasant visits. [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. . . .’ [Citation.] The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive emotional attachment between child and parent. [Citations.] Further, to establish the section 366.2, subdivision (c)(1)(B)(i) exception the parent must show the child would suffer detriment if his or her relationship with the parent were terminated. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)” (*C.F.*, *supra*, 193 Cal.App.4th at p. 555, fn. omitted.)

“Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) “Application of this exception is decided on [a] case-by-case basis and a court takes into account such factors as the minor’s age, the portion of the minor’s life spent in the parent’s custody, whether interaction between parent and child is positive or negative, and the child’s particular needs.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 471 (*Scott B.*), citing *Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576.)

Here, the court took into account evidence of the love that plainly exists between Father and the children, as well as the positive nature of their visits and the boys' ongoing wish to return to Father's care, if possible.⁹ However, despite this evidence that the relationship with Father *was* beneficial in some ways to the children, we conclude the court did not abuse its discretion when it concluded the benefit of maintaining that relationship did not outweigh the well-being the boys would gain from the stability and permanency of adoption by their aunt and uncle. (See *K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622; *C.F.*, *supra*, 193 Cal.App.4th at p. 555; see also *J.C.*, *supra*, 226 Cal.App.4th at pp. 530-531.)¹⁰

Looking at the factors discussed in *Scott B.* 188 Cal.App.4th at page 471 and *Autumn H.*, *supra*, 27 Cal.App.4th at pages 575-576, first, K.G. was eight years old and C.G. was six years old at the time the court terminated parental rights in January 2016. They had been formally out of Father's custody for 21 months, since April 2014, although they had spent the majority of their lives in his custody. In addition, with respect to the interaction between the children and Father (see *ibid.*), the evidence showed that, before they were removed, the children were exposed to domestic violence between the parents and both parents' substance abuse, among other things. K.G. was also missing an average of two days a week of school and the children were noted to be

⁹ Father asserts that the court placed undue weight on the social worker's testimony that the children had most recently said they wanted to live with Father because he had a better video game system. The record, however, reflects that the court considered all of the evidence regarding the children's bond with Father and their ongoing desire to live with him in reaching its decision.

¹⁰ We observe that the parents had the burden in this matter to prove that termination of parental rights would be detrimental to the children under section 366.26, subdivision (c)(1)(A). (See *C.F.*, *supra*, 193 Cal.App.4th at p. 553.) After social worker Shaw testified at the section 366.26 hearing, the juvenile court stated that it "would need to hear from" the parents, and perhaps other witnesses, to enable it to determine the applicability of the exception, and continued the hearing to permit the parties to decide whether to call additional witnesses. Neither parent testified at the continued hearing, and no other witnesses were called. The court therefore had to weigh the evidence that had been presented to make its determination.

extremely angry and aggressive. After their removal, the boys' visits with Father were, for the most part, very consistent and positive. They initially struggled with not seeing their parents, particularly Father. C.G. expressed that he wanted to hurt himself because of his sadness about not seeing his parents.

Over time, however, the children adjusted to their new situation. In fact, when visits were moved from the Department to the aunt's home, under her supervision, Father's conduct became problematic and K.G.'s behavior deteriorated; K.G. told the aunt that he did not know if he liked having Father visit the home. Once visits returned to a more controlled environment, supervised through the Department or TVS, these concerns disappeared. In addition, after Father's reunification services were terminated, the social worker reported that the children enjoyed their visits with Father, but had no problem transitioning back to the aunt and uncle after visits.¹¹ The CASA also reported that the children had adjusted well to the more limited visitation with Father, although the CASA was concerned that Father was "trying to buy or bribe" the boys with expensive gifts. Both children seemed to understand that they were unlikely to be able to live again with Father, and both expressed positive feelings about continuing to live with their aunt and uncle if they could not reunify with Father.

With respect to the children's particular needs (see *Scott B.* 188 Cal.App.4th at p. 471; *Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576), the evidence showed that both children had adjusted well to the placement with their aunt, whom they had known all of their lives, and with their uncle. By January 2015, the aggressive behavior between the children had lessened and K.G. had advanced five levels in reading. In September 2015, after Father's reunification services had been terminated, the CASA described K.G. as having become much happier over the previous couple of months with school and his home situation, "almost as if a huge burden ha[d] been lifted from him." The CASA

¹¹ At the section 366.26 hearing, social worker Shaw described a visit he had observed in October 2015, in which K.G. was a bit upset that the visit had to end. But Father "did a great job comforting him" and the boys were able to easily transition back to their aunt.

described C.G. as a sweet and loving boy, whose confidence had increased over the prior few months.

In addition, K.G.'s former therapist had informed the social worker that K.G. had made significant progress over the two years she had worked with him, in large part due to the stable life he had with his aunt and uncle. The therapist believed that K.G. had a positive attachment with his aunt, "who provided a very loving, safe, and stable environment that he is able to thrive in." The therapist did strongly believe that post-adoption visitation with Father would be appropriate for K.G., in light of their close relationship. Similarly, C.G.'s therapist noted the major change in C.G.'s behavior over the year she had worked with him. She believed the aunt had helped with his growth because of the safety C.G. felt with her. Although he had initially talked about going home to Father, he had not recently brought up his parents, and she believed he was now "in a good space."

The children had expressed to the social worker a desire to live with Father, but they had come to understand that returning to his care was not possible. As the social worker reported, they had "expressed that they will be sad, but understand that their aunt will take care of them and they will grow up in their home." The social worker added that the children also understood that they would be able to maintain contact with their parents, which the social worker believed was appropriate, given their good relationship with Father.

At the section 366.26 hearing, social worker Shaw testified that the aunt and uncle were committed to providing the children with a stable home. The boys were happy and content there, and had a "solid routine" of school and after-school activities. They also participated in family activities with their aunt, uncle, and cousin. Although the boys still consistently mentioned wanting to live with Father, Shaw, who testified as an expert in child welfare and social work, believed the aunt and uncle were now the parental figures in their lives. Shaw acknowledged that the children would experience some grief and loss upon termination of parental rights, but believed that the benefit of adoption outweighed any such detriment.

Finally, it bears noting that Father's progress with his case plan was quite limited through most of the dependency. This included his minimal participation in drug treatment and testing, his near failure to participate in counseling regarding domestic violence and anger management. It was not until after his reunification services were terminated that Father began to more fully engage in services. By the time of the hearing on his section 388 petition, the court noted that even after 18 months, Father had only recently completed a single major component of his case plan, related to his substance abuse, and still had not addressed several other aspects, such as safe housing, domestic violence, and anger management issues.

Examination of the various factors discussed in *Scott B.*, *supra*, 188 Cal.App.4th at page 471 and *Autumn H.*, *supra*, 27 Cal.App.4th at pages 575-576 in the context of this case supports the juvenile court's finding that the parent-child relationship exception to adoption did not apply. (See *C.F.*, *supra*, 193 Cal.App.4th at p. 553.)

This case is not comparable to two cases cited by Father: *In re Scott B.*, *supra*, 188 Cal.App.4th 452 and *In re Jerome D.* (2000) 84 Cal.App.4th 1200 (*Jerome D.*). In *Scott B.*, an autistic child had spent most of his 11 years living with his mother. (*Id.* at pp. 455, 471.) The mother had had consistent weekly visits with Scott, and his CASA had repeatedly stated that they had a very close relationship and that it would be detrimental to Scott for the relationship to be disrupted. (*Id.* at p. 471.) The evidence in the record showed that Scott's ability to handle adoption by the foster mother was "fragilely based on his belief that being adopted means he and Mother and the foster family will all 'go somewhere fun'" (*Ibid.*) The court also found that it was clear that "Scott's emotional makeup will not enable him to endure interruption of his long-standing frequent visits with Mother." (*Ibid.*) The court found that Scott's mother provided stability in Scott's life, while adoption might not do so, given his strong emotional attachment to his mother and his continued precarious emotional state. (*Id.* at p. 472.) The court also found that termination of parental rights was unnecessary given that a legal guardianship with the foster mother would provide Scott with stability. (*Ibid.*) The court concluded that the "mother-child relationship in the instant case,

coupled with Scott's continued emotional instability and his repeated insistence that his preference would be to live with Mother, presents a compelling reason for finding that termination of parental rights is detrimental to the minor." (*Id.* at p. 471.)

Here, unlike in *Scott B.*, the children were *not* emotionally fragile at the time parental rights were terminated, in large part due to the secure, loving home they had with their aunt and uncle. They had learned to cope with and understand the likelihood that they would not be able to reunify with Father. They were happy in their new home, in which in their behavior and emotional health had significantly improved. Moreover, unlike in *Scott B.*, the CASA in this case acknowledged the love the boys have for Father, but described both boys as content to remain in their current home, and recommended that the permanent plan be adoption by the aunt and uncle. Thus, the level of detriment to the boys from termination of parental rights is simply not comparable to the significant risk to the emotional health of the child in *Scott B.*

Similarly, *Jerome D.* involved a child who enjoyed unsupervised overnight visits in his mother's home and "[t]here was apparently no woman in his life other than Mother with whom he had a beneficial relationship." (*Jerome D.*, *supra*, 84 Cal.App.4th at p. 1207.) The child in *Jerome D.* also "seemed lonely, sad, and the stepchild or 'the odd child out' in [the] home" of the prospective adoptive parent, who was the mother's former boyfriend. (*Id.* at p. 1206.) In addition, the prospective adoptive parent had "serious shortcomings as a caretaker." (*Id.* at p. 1208.) Here, even supervised visits in the community proved problematic, and the evidence showed that the boys had developed a beneficial parent-child relationship with both their aunt and uncle. Plainly, while K.G. and C.G. love their father, they also feel loved and cared for in their current home, which has allowed them to grow and thrive since their removal from the parents.

In conclusion, in reviewing all of the evidence presented, the juvenile court took into account the children's expressed preference to live with Father and the loving relationship they shared, recognizing that they derived some benefit from that relationship. We find that substantial evidence supports the court's factual findings. (See *J.C.*, *supra*, 226 Cal.App.4th at pp. 530-531.) But the court also found that, in the care of

the aunt and uncle, the children had “improved dramatically” and were “thriving as a result of being in a stable and loving home that meets their needs.” Even with the evidence of the children’s expressed preference to live with Father and the love between them, the court reasonably concluded that that relationship nevertheless was not so essential to their well-being as to outweigh the well-being they would gain in a stable, permanent adoptive home with their aunt and uncle. (See *K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622.) The court thus did not abuse its discretion in finding that the level of detriment to the children from terminating Father’s parental rights was not such that they “would be greatly harmed,” when balanced against the benefit of adoption by the aunt and uncle. (*C.F.*, *supra*, 193 Cal.App.4th at p. 555; see *J.C.*, *supra*, 226 Cal.App.4th at pp. 530-531; compare *In re Amber S.* (2002) 103 Cal.App.4th 681, 689-690 [where (1) bonding study showed that children shared primary attachment with Mother, (2) CASA disagreed with Agency’s adoption recommendation due to bond and love between mother and children, and (3) mother had done “virtually all that was asked of her to regain custody,” court improperly terminated her parental rights].)

Father nonetheless argues that the court could have chosen legal guardianship as the permanent plan, which would have provided the children with the benefit of stability in the home of the aunt and uncle while also continuing their relationship with the parents. However, although the Department had provided them with information about both legal guardianship and adoption, the social worker reported that the aunt and uncle had never considered legal guardianship instead of adoption. The court also noted the law’s preference for adoption and stated its belief that the children deserved the stability that adoption would give them. (See *In re Dakota H.* (2005) 132 Cal.App.4th 212, 231 [“Unlike adoption, other permanency options are not equivalent to the security of a permanent home. [Citation.] Even guardianship is ‘not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.’ ”].)¹² Although we,

¹² We also observe that, although not binding on the adoptive parents and not relied on by the court, the aunt and uncle repeatedly stated their intention to

like the juvenile court, are mindful of the close relationship Father shares with the children, in light of the evidence presented and the legislative preference for adoption as the permanent plan, we conclude the court appropriately determined that this was simply not the kind of “extraordinary case” in which “preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

DISPOSITION

The juvenile court’s orders terminating the parents’ parental rights and ordering adoption as a permanent plan for K.G. and C.G. are affirmed.

support contact between the children and the parents, so long as such contact remained safe for the children. Indeed, the court “caution[ed] the adoptive parents that not facilitating contact, although there is no requirement that they do so, but not doing that would probably be a big mistake for these kids. They’re not going to forget who their parents are. . . .” The aunt, for her part, had expressed to the social worker her understanding of the close connection the boys have with Father and the need to support that relationship, so long as it was safe for the boys.

Kline, P.J.

We concur:

Richman, J.

Stewart, J.

In re K.G. et al. (A147362, A146769)